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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,176	05/04/2001	Michael E. Gaddis	22013-05976	9666

22206 7590 07/29/2004

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EXAMINER

VU, VIET DUY

ART UNIT

PAPER NUMBER

2154

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/849,176	GADDIS ET AL.	
	Examiner	Art Unit	
	Viet Vu	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/30/02, 6/25/01, 6/19/02, 10/01/01</u> | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2154

Art Rejections:

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4-6, 8-18 and 20-22 and 24-34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Aziz, U.S. pat. No. 5,325,362.

Per claims 1-2, 4-5 and 12, Aziz discloses a method and system for sending a message sent over a backbone network comprising:

- a) establishing a first tunnel (tunnel A, fig. 8) between a backbone and a first client (see col 6, lines 48-65),
- b) establishing a second tunnel (tunnel B, fig. 8) between the backbone and a second client (see col 7, lines 1-4),
- c) routing the packet between the first and second clients through the first and second tunnels (see col 7, lines 5-12).

Per claims 6 and 8, Aziz teaches informing client router of the created tunnel including router destination address (see col 7, lines 13-15).

Art Unit: 2154

Per claims 9-11 and 13, Aziz also teaches encapsulating the message with a new header when entering the tunnel and decapsulating the header when exiting the tunnel (see col 1, lines 50-60 and col 2, lines 28-34).

Per claim 14, it is noted that in Aziz the router is utilized a centralized routing policy (col 8, lines 60-67).

Claims 15-18 and 20-22 and 24-34 are similar in scope as that of claims 1-2, 4-6 and 8-14.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 2154

5. Claims 3, 7, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aziz in view of Clark et al, U.S. pat. No. 6,442,588.

Per claims 3 and 19, Aziz's teachings are still applied as discussed above. Aziz does not teach using GRE tunnel. The use of GRE tunnel is well known in the art as disclosed by Clark (see Clark's col 5, lines 5-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize any conventional tunneling protocol including GRE tunnel in Aziz for practicing Aziz's invention.

Per claims 7 and 23, the use of best effort routing in the network is well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize any conventional routing method in Aziz for routing data in the network when tunneling protocol is not in use.

Conclusion:

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is 703-305-9597. The examiner can normally be reached on Monday through Thursday from 8:00am to 4:00pm.

Art Unit: 2154

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached on (703) 305-8498.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-305-9600. The Group fax number is 703-872-9306.



VIET D. VU
PRIMARY EXAMINER

Art Unit 2154

7/22/04